IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 73 of 1998 with Cross-objection No. 187/98.

RFA No. 55 of 1998.

RFA No. 58 of 1998 with Cross Objection No. 171/98.

RFA No. 80 of 1998 with Cross Objection No. 169/98.

and

RFA No. 99 of 1998 with Cross Objection No.178/98.

Judgement reserved on: 4.10.2007.

Date of decision: 19.11.2007.

(For title, please see reverse)

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : **Mr.K.D.Shreedhar, Advocate with Mr. Rajnish Maniktala, Advocate.**

For the Respondents : **Mr. M.S.Chandel, Advocate General with Mr. M.L.Chauhan, Additional Advocate General, for respondents State of H.P. and Collector, Land Acqusition (In all appeals).**

Mr. Jagan Nath, Advocate vice Mr. Anand Sharma, Advocate for other respondents.

(In all appeals) .

Kuldip Singh, Judge.

This judgement shall dispose of RFA No. 73 of 1998 with Cross Objection No. 187 of 1998, RFA No. 55 of 1998, RFA No. 58 of 1998 with Cross Objection No. 171 of 1998, RFA No. 80 of 1998 with

---

Whether the reporters of the local papers may be allowed to see the Judgment?

Cross Objection No. 169 of 1998 and RFA No. 99 of 1998 with Cross Objection No. 178 of 1998, which have been filed against common, award, dated 1.11.1997, passed by the learned District Judge, Chamba, in Land Reference Case Nos. 19, 42, 22, 40 and 20 of 1994, respectively.

2. The facts in brief are that State of H.P. for acquiring land for Chamera Dam Reservoir in Mohal Rajnagar, Pargana Rajnagar, Tehsil and District Chamba, issued Notification, under Section 4 of the Land Acquisition Act, 1894 (for short, the Act), which was published on 6.6.1992. The Land Acquisition Collector (for short, the Collector) announced the award on 31.7.1993. The following are the details of lands and structures and compensation awarded by the Collector, as shown in para-3 of the impugned award:-

Sr. No.	**Case No. and title of the petition.**	**Area of land acquired.**	**Amount of compensation awarded.**
1.	19/94, Diwan Singh Vs. State etc.	7-1-0 Structures	2,13,443/- 1,25,267/-
2.	20/94 Kamal Singh Vs. NHPC etc.	2-9-0 Structures	65,483/- 44,723/-
3.	22/94 Rattan Singh Vs. NHPC etc.	11-15-0 Structures	3,38,802/- 84,459/-
4.	40/94, Smt. Naro Vs. State etc.	3-12-0 Structures	98,679/- ----
5.	42/94, Prem Dass Vs. State etc.	0-14-10 Structures	33,088/- 57,950/-

3. The Collector awarded compensation at different rates in respect of different kinds of lands. Some of the land owners were aggrieved by the compensation awarded by the Collector, therefore, they preferred reference petitions, under Section 18 of the Act. The learned District Judge, enhanced the compensation as follows:-

Sr. No.	**Case No. and title of the petition.**	**Compensation awarded by Collector.**	**Awarded by the court.**	**Net amount of enhanced compensation**
1.	19/94, Diwan Singh Vs. State etc.	Land: 2,13,443/- Structures: 1,25,267/-	3,09,492/- 1,87,900/-	96,049/- 62,633
2.	20/94 Kamal Singh Vs. NHPC etc.	Land : 65,483/- Structures : 44,723/-	94,950/- 67,087/-	29,467/- 22,362/-
3.	22/94 Rattan Singh Vs. NHPC etc.	Land: 3,38,802/- Structures: 84,459/-	4,91,262/- 1,26,688/-	1,52,460/- 42,229/-
4.	40/94, Smt. Naro Vs. State etc.	Land: 98,679/- Structures: ---	1,43,085/- ---	44,406/- ---
5.	42/94, Prem Dass Vs. State etc.	Land: 33,088/- Structures: 57,950/-	47,977/- 86,925/-	14,889/- 28,975/-

4. Chamera Hydroelectric Project has filed the above appeals against the impugned award. The land owners have also filed Cross Objection No.187 of 1998 in RFA No. 73 of 1998, Cross Objection No. 171 of 1998 in RFA No. 58 of 1998, Cross Objection No. 169 of 1998 in RFA No. 80 of 1998 and Cross Objection No. 178 of 1998 in RFA No. 99 of 1998.

5. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellants has submitted that the learned District Judge has awarded excess compensation to the land owners. The sale deed Ex. P-1 dated 4.2.1988 has been wrongly relied, sale deeds Ex. P-2, dated 15.1.1991, Ex. R-1 dated 9.7.1992 and Ex. R-2 dated 2.7.1993 have been wrongly excluded for assessing the market value of the acquired land. Fifty percent increase for the structures has been wrongly awarded. The District Judge has misconstrued, misinterpreted the material on record and has erred in enhancing the compensation over and above what was awarded by the Collector. The learned counsel representing the land owners has supported the impugned award and in Cross Objection No.187 of 1998 in RFA No. 73 of 1998, Cross Objection No. 171 of 1998 in RFA No. 58 of 1998, Cross Objection No. 169 of 1998 in RFA No. 80 of 1998 and Cross Objection No. 178 of 1998 in RFA No. 99 of 1998, has submitted that less compensation has been awarded to the land owners. They are entitled to enhancement of compensation, as claimed by them in respective cross objections.

6. The learned District Judge on the basis of sale deed Ex. P-1 dated 4.2.1988 after allowing 60% deduction has assessed the market value of Barani Awal land at Rs. 40,000/- per bigha, as against Rs. 27,590/- awarded by the Collector for Barani Awal land. The learned District Judge accordingly has allowed 45% increase for other types of acquired lands over and above assessed by the Collector for those types of lands. The learned District Judge has also

assessed market value of the structures 50% over and above what has been awarded by the Collector.

7. PW 1 Diwan Singh has stated that houses and lands of Kamal Singh, Prem Dass, Rattan Singh, Smt. Naro and his own were situated in Mohal Rajnagar, village Thari. There were trees and water mill on his land, which have been acquired and his one bigha land only has been left. The compensation awarded is less. In their Mohal, the land is at Rs. 8000/- to Rs. 9000/- per biswa. Their houses were pucca. The compensation for trees has been awarded as per 1966 rates. Rajnagar is at a distance of 13-14 kilometers from Chamba. The payment of houses has been made to them as per 1987 schedule of rates. The market value of their houses in 1993 had increased to 250% in comparison to 1987 rates.

8. PW 2 Hardyal Singh has stated that he has sold 2 biswas land in Mohal Rajnagar for Rs. 10000/- to Chafar vide sale deed dated 4.2.1988,copy Ex. P-1. PW 3 Sahab Singh has stated that he has sold his 3 biswas land to Tilak at the rate of Rs. 4000/- per biswa in village Thari vide sale deed dated 15.1.1991, copy Ex. P-2. PW 4 Milap Chand, Supervisor Horticulture, Chamera Hydroelectric Project has stated that he was deputed by the project authorities to count the trees and make measurements which he did in February 1993 and prepared the estimate in that year. He assessed the value of fruit bearing trees as per 1966-67 rates. PW 5 Jai Krishan, Draughtsman, HPPWD, Chamba has stated that as per 1987 schedule of rates, in the year 1993 the extra costs of labour and material was having difference of 161.58%, as per copy Ex. PW 5/A. The land owners tendered in

evidence the revenue record Ex. PX, Ex. PY and Ex. PZ of sale deeds in order to show the quality of the land.

9. RW 1 Bahadur Singh, Assistant Grade-II has stated regarding the rehabilitation grant given by the project to the persons whose properties are acquired for the project. Copies of sale deed dated 9.7.1992 Ex. R-1 and sale deed dated 2.7.1993 Ex. R-2 were tendered in evidence also. This is the entire evidence led by the parties.

10. The counsel for the appellant has submitted that learned District Judge has erred in relying sale deed Ex. P-1 dated 4.2.1988, according to him this sale deed is of 2 biswas of land, which is a small area in comparison to large area acquired for the reservoir. He has submitted that small area transaction cannot be relied for assessing the market value of the large area. The sale deed Ex. P-1 was executed on 4.2.1988 and the notification under Section 4 of the Act for acquiring the land was issued on 6.6.1992.There is nothing on record to show that sale deed Ex.P-1 is a sham transaction. The sale deed Ex. P-1 has not been executed to enhance the market value of the acquired land. PW 2 Hardyal Singh has stated that through sale deed Ex. P-1 he sold 2 biswas of land in Mohal Rajnagar to Chafar for a consideration of Rs.10000/-. The sale deed Ex. P-1 is of Mohal Rajnagar where the land has been acquired for reservoir. Thus sale deed Ex. P-1 is a genuine transaction between vendor and vendee for selling the land mentioned therein.

11. The next question is whether reference court has committed an error in relying sale deed Ex. P-1 for assessing the

market value of the acquired land. The learned District Judge has given reasons for not relying sale deed dated 15.1.1991 Ex. P-2, vide which Sahab Singh has sold his 3 biswas of land to Tilak at the rate of Rs. 4000/- per biswa in village Thari. The sale deed Ex. R-1 dated 9.7.1992 and sale deed Ex. R-2 dated 2.7.1993 relied by the appellant were executed after 6.6.1992 when notification, under Section 4 of the Act for acquiring the land was already issued. Moreover, there is no evidence on record to show that lands covered by sale deeds Ex. R-1 and Ex. R-2 are comparable with the acquired land. The learned District Judge has rightly not relied the sale deeds Ex. P-2, Ex. R-1 and Ex. R-2 for assessing the market value of the acquired land.

12. The sale deed Ex. P-1 is only left on record for consideration. The objection of the learned counsel for the appellant is that this sale deed is of small area and therefore, it cannot be relied for assessing the market value of the large area. In **Ravinder Narain and another** vs. **Union of India** [2003 (4) SCC 481], the Hon'ble Supeme Court in para-7 has held as follows:-

> "It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions / adjustments have to be made while determining the prices."

13. In **Basavva (Smt) and others** vs. **Spl. Land Acquisition Officer and others** [1996 (9) SCC 640], the Hon'ble Suprekme Court has held as follows:-

> "In Vasundara Devi case 63% deduction was upheld. In view of the fact that development of land would have taken years, the High Court has deducted another 12%. Obviously the High Court kept in view the fact that the lands under Ex. P-10 were situated at far flung places from the lands under acquisition and since the land takes long time for development it has given additional deduction of 12% i.e. 53 + 12% = 65% in determination of the compensation. On the basis of rationale referred to above, the principle adopted by the High Court cannot be said to be illegal."

In the present case, the learned District Judge has assessed the market value of the acquired land on the basis of Ex. P-1 sale deed at Rs. 1,00,000/- per bigha and after allowing 60% deduction ultimately assessed the market value of the acquired land at Rs. 40,000/- per bigha of Barani Awal as against Rs. 27,590/- of such land assessed by the Collector. Once the learned District Judge has assessed the market value of the Barani Awal land 45% above the market value assessed by the Collector of such land, therefore, he allowed 45% increase to other types of lands over and above what was assessed by the Collector for such types of lands. In view of law laid down by the Apex Court referred to above, no fault can be found in the assessment made by learned District Judge, when he has assessed the market value of the acquired land on the basis of sale deed Ex. P-1 after making 60% deduction.

14. It has been submitted by the learned counsel for the appellant that learned District Judge has erred in enhancing the market value of structures by 50%. It has not been denied that market value of the structures was assessed on the basis of 1987 schedule of rates. The acquisition was done vide notification dated 6.6.1992. PW 5 Jai

Krishan, Draughtsman HPPWD, Chamba has stated that in the year 1993 the extra costs of labour and material was having difference of 161.58% in comparison to 1987 HPPWD schedule of rates as per Ex. PW 5/A. It is known fact that there is general trend of increase in the cost of construction. The learned District Judge for assessing the market value of the structures has given 50% increase on 1987 schedule of rates. The structures were acquired vide notification dated 6.6.1992, under Section 4 of the Act. Therefore, in my opinion, 50% increase allowed by the learned District Judge for the structures is just and reasonable.

15. In the cross objections, the land owners have claimed market value of the acquired land at Rs.90,000/- per bigha. It has been submitted that learned District Judge has erred in allowing 60% deduction from the market value assessed on the basis of sale deed Ex. P-1. As discussed above, the land covered by sale deed Ex. P-1 is of small area measuring 2 biswas in comparison to acquired land of large area. This Court in **RFA No. 72 of 1998 and other connected matters, decided on 30.5.2007**, has already upheld the principle adopted by the learned District Judge for assessing the market value after allowing deduction. In **RFA No. 72 of 1998,** the notification, under Section 4 of the Act, was issued on 6.6.1992 for acquiring the land and structures for Chamera Reservoir in Mohal Rajnagar itself. The judgement rendered in RFA No. 72 of 1998 is fully applicable in the present case, and, therefore, the land owners are not entitled to any enhancement of compensation for the lands and structures acquired.

16. The land owners by way of cross-objections have also submitted that nothing has been awarded to them for fruit/ non fruit trees which were standing on the acquired land. In the present case, comparable sales method was adopted for assessing the market value of the acquired land. The land owners have not produced any material on record to assess the market value of the acquired land with trees separately. The land owners were satisfied with the comparable sales method for assessing the market value of the acquired land with the trees. The perusal of impugned award would show that land owners before the learned District Judge did not press for compensation of trees and non fruit trees which were standing on the acquired land. In the cross- objections, it is not the case of the land owners that they pressed for compensation for fruit and non fruit trees separately before the learned District Judge and despite that learned District Judge did not consider their case for compensation for fruit and non fruit trees. In these circumstances, it can be safely inferred that land owners had given up/ abandoned their claim for compensation for fruit and non fruit trees. Once they have given up/ abandoned their claim for fruit and non fruit trees, therefore, by way of cross objections they cannot be permitted to put forward the claim for fruit/ non fruit trees standing on the acquired land by way of cross objections. This court has taken this view in **RFA No. 3 of 1998, decided on 9.8.2007**. Therefore, the land owners are not entitled to any compensation for fruit and non fruit trees. The appellant in the appeals and land owners in the cross objections have failed to make out any case for interference in the impugned award. The impugned award is accordingly affirmed.

17. No other point was urged.

18. As a result of the above discussion, all the appeals, being RFA No. 73 of 1998 with Cross Objection No. 187 of 1998, RFA No. 55 of 1998, RFA No. 58 of 1998 with Cross Objection No. 171 of 1998, RFA No. 80 of 1998 with Cross Objection No. 169 of 1998 and RFA No. 99 of 1998 with Cross Objection No.178 of 1998 are dismissed. No costs.

November 19, 2007. **(Kuldip Singh)**
(*Hem)* **Judge.**

1. **RFA No. 73 of 1998 with Cross Objection No. 187/98.**

Chamera Hydroelectric Project ….. Appellant.

Vs.

Diwan Singh & ors. ….. Respondents.

2. **RFA No. 55 of 1998.**

Chamera Hydroelectric Project ….. Appellant.

Vs.

Prem Dass & ors. ….. Respondents.

3. **RFA No. 58 of 1998 with Cross Objection No. 171/98.**

Chamera Hydroelectric Project ….. Appellant.

Vs.

Omkar Singh & ors. ….. Respondents.

4. **RFA No. 80 of 1998 with Cross Objection No.169/98**

Chamera Hydroelectric Project ….. Appellant.

Vs.

Smt. Naro & ors. ….. Respondents.

5. **RFA No. 99 of 1998 with Cross Objection No. 178/98.**

Chamera Hydroelectric Project ….. Appellant.

Vs.

Kamal Singh & ors. ….. Respondents.